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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF TORTURE AND DETENTION

Report of the working group on a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on its ninth session

Chairperson-Rapporteur: Ms. Elizabeth Odio Benito (Costa Rica)

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Introduction

1. The Commission on Human Rights, in its resolution 2000/35, took note of the report of the open-ended working group on a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) (E/CN.4/2000/58) and requested the working group, in order to continue its work, to meet prior to the fifty-seventh session of the Commission for a period of two weeks, with a view to completing expeditiously a final and substantive text, and to report to the Commission at its fifty-seventh session. It also encouraged the Chairperson-Rapporteur of the working group to conduct informal inter-sessional consultations with all interested parties in order to facilitate the completion of a consolidated text.

2. The Economic and Social Council, in its decision 2000/262, authorized the open-ended working group of the Commission to meet for a period of two weeks prior to the fifty-seventh session of the Commission in order to continue or conclude the elaboration of a draft optional protocol. It also encouraged the Chairperson-Rapporteur of the working group to conduct informal inter-sessional consultations.

I. ORGANIZATON OF THE SESSION

A. Opening of the session and election of officers

3. The working group held its ninth session from 12 to 23 February 2001. It was opened by a representative of the United Nations High Commissioner for Human Rights, who made an introductory statement.

4. At its 1st meeting, on 12 February 2001, the working group re-elected Ms. Elizabeth Odio Benito (Costa Rica) as Chairperson-Rapporteur.

B. Attendance

5. Representatives of the following States members of the Commission on Human Rights attended the meetings of the working group, which were open to all members of the Commission: Algeria, Argentina, Belgium, Brazil, Canada, China, Colombia, Costa Rica, Cuba, Czech Republic, Ecuador, France, Germany, Guatemala, Italy, Japan, Latvia, Mexico, Norway, Poland, Portugal, Romania, the Russian Federation, Saudi Arabia, South Africa, Spain, Thailand, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Uruguay and Venezuela.

6. The following States non-members of the Commission on Human Rights were represented by observers at the meetings of the working group: Albania, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Democratic People's Republic of Korea, Denmark, Egypt, El Salvador, Estonia, Ethiopia, Finland, Georgia, Greece, Honduras, Israel, Lithuania, Morocco, Nepal, Netherlands, New Zealand, Panama, Paraguay, the Philippines, Slovakia, Slovenia, Sweden and Tunisia.

7. The Holy See and Switzerland were also represented by observers.

8. The European Commission, the International Committee of the Red Cross and the following non-governmental organizations were represented by observers at the meetings of the working group: Amnesty International, Association for the Prevention of Torture, Human Rights Watch, International Club for Peace Research (ICPR), International Commission of Jurists, International Federation of ACAT (Action by Christians for the Abolition of Torture), International Rehabilitation Council for Torture Victims (IRCT), International Service for Human Rights and the World Organization against Torture (OMCT).

9. Mr. Andreas Mavrommatis, member of the Committee against Torture, and Sir Nigel Rodley, Special Rapporteur on the question of torture, participated in the meetings on 22 and 23 and on 15 and 16 February 2001 respectively.

10. At its 6th meeting, on 16 February 2001, the United Nations High Commissioner for Human Rights, addressed the working group.

C. Documentation

11. The working group had before it the following documents:

E/CN.4/2001/WG.11/1	Provisional agenda
E/CN.4/2001/WG.11/WP.1	Working paper submitted by the secretariat
E/CN.4/2001/WG.11/CRP.1	Alternative preliminary draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment submitted by the delegation of Mexico with the support of GRULAC
E/CN.4/2001/WG.11/CRP.2	Working paper submitted by the delegation of Sweden, on behalf of the European Union, containing a proposal for new and revised articles to be included in the original draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
E/CN.4/2000/58	Report of the working group on its eighth session
E/CN.4/1999/59 and Add.1	Report of the working group on its seventh session
E/CN.4/1998/42 and Corr.1	Report of the working group on its sixth session
E/CN.4/1997/33	Report of the working group on its fifth session

E/CN.4/1996/28 and Corr.1	Report of the working group on its fourth session
E/CN.4/1991/66	Letter dated 15 January 1991 from the Permanent Representative of Costa Rica to the United Nations Office at Geneva addressed to the Under-Secretary-General for Human Rights

D. Organization of work

12. At the 1st meeting, on 12 February 2001, the Chairperson-Rapporteur of the working group expressed the hope that the working group would reach agreement on a final text of the optional protocol for adoption by the Commission on Human Rights at its fifty-seventh or at the latest at its fifty-eighth session. She also proposed holding informal consultations for the purpose of drawing up a work plan for the current session of the working group.

13. At its 2nd meeting, on 13 February 2001, the working group had before it a document entitled "Alternative preliminary draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "the alternative draft") presented by the delegation of Mexico with the support of the group of Latin American countries (GRULAC). The Chairperson-Rapporteur proposed that delegations examine the document and make comments at the next meeting.

14. At its 3rd meeting, on 14 February 2001, after a general debate on the alternative draft, the working group adopted its revised agenda (E/CN.4/2001/WG.11/1). At the same meeting, the working group agreed with a proposal by the Chairperson-Rapporteur to devote a number of meetings to a general debate on the role of national and international mechanisms in the framework of the optional protocol, and the relationship between them. At its 7th to 9th meetings, on 19 and 20 February 2001, the working group held a debate on a number of thematic issues.

15. At its 10th meeting, on 22 February 2001, the delegation of Sweden, on behalf of the European Union, presented a working paper containing a proposal for new and revised articles to be included in the original draft optional protocol contained in documents E/CN.4/1996/28 and E/CN.4/2000/58. The proposed articles were presented together with articles adopted in second reading by the working group. No debate was held on the working paper.

16. Also at its 10th meeting, the observer of Switzerland, also on behalf of the delegations of Canada, Georgia, Japan and New Zealand, made a statement reiterating the strong preference of these delegations for negotiating the optional protocol on the basis of the original draft submitted by Costa Rica. These delegations, however, welcomed the new ideas presented by the delegations of Mexico with the support of GRULAC, Sweden on behalf of the European Union and other delegations and agreed to study them further. They noted that one idea that appeared particularly promising was the implementation of the obligations under the optional protocol, in particular the programme of visits by an international mechanism, in a progressive manner,

for example through a transitory provision or implementation in phases. They had difficulties, however, with any proposal that, in their view, would elevate national mechanisms above international ones and considered that national mechanisms should not be an alternative to but should complement a strong, effective international mechanism.

17. The representative of Costa Rica also made a statement at the 10th meeting indicating that in view of the fact that the working group had for the previous nine years been unable to reach consensus over the original draft optional protocol proposed by Costa Rica, the moment had come to study new proposals. The Costa Rican delegation therefore welcomed the new ideas presented by Mexico and Sweden.

18. Following a proposal made by the delegation of Venezuela on behalf of GRULAC, the working group decided at its 10th meeting to request the Commission that it extend the mandate of the working group to allow the Chairperson-Rapporteur to conduct informal inter-sessional consultations.

II. GENERAL DISCUSSION

A. General debate on the alternative draft submitted by the delegation of Mexico with the support of GRULAC

19. The delegation of Mexico introduced the alternative draft at the 2nd meeting of the working group, on 13 February 2001. The delegation of Mexico indicated that the alternative draft was based on the principle that States have the primary responsibility for the protection of human rights and that the action of the international mechanisms has to be complementary to the action taken by each individual State. In the alternative draft it was proposed that States parties to the protocol should create national mechanisms for the prevention of torture. At the same time it was proposed that an international mechanism be set up which, inter alia, would support and supervise the activities of the national mechanisms. A number of delegations from other regional groups supported the alternative draft, some as a whole, some in part, and appreciated the efforts of the delegation of Mexico to break the deadlock in the drafting process of the optional protocol.

20. At its 3rd meeting, on 14 February 2001, the working group held a general discussion on the alternative draft. The Chairperson-Rapporteur opened the discussion by referring to some of the basic principles underlying the mandate of the working group. The Commission on Human Rights, in resolution 2000/35 had recalled that the World Conference on Human Rights had firmly declared that efforts to eradicate torture should, first and foremost, be concentrated on prevention and had called for the early adoption of an optional protocol intended to establish a preventive system of regular visits to places of detention. The Chairperson-Rapporteur emphasized that the Commission had not specified in the resolution that the visits should be carried out solely by national or international bodies.

21. Some delegations from other regional groups strongly supported the alternative draft, emphasizing the complementary nature of the proposed national and international mechanisms. Others, however, held the view that there was no proper balance between the national and the

international levels in the alternative draft and expressed concern that the latter seemed to become subsidiary to the former. In their opinion, this was contrary to the spirit of the original draft optional protocol that had been discussed since 1992.

22. The delegations supporting the alternative draft or its general thrust underlined that it did not constitute an entirely new text but rather an improvement of the original draft, supplemented by the added value of national mechanisms. Being on the spot, national mechanisms, in their opinion, would be in a better position to prevent torture and to visit facilities all over a country, including those located in remote areas where an international body would probably never go.

23. Some delegations referred to the large number of detention facilities that existed in some countries and concluded that it would be illusory to claim that an international mechanism on its own could carry out all the activities necessary to prevent torture effectively. Other delegations welcomed the introduction of new ideas and did not regard the original text as a tenable basis for agreement.

24. It was strongly felt by some delegations that discussions should resume on the basis of the original draft and focus on the establishment of an international mechanism. They all agreed that national mechanisms could play an important role in the prevention of torture and recalled in this respect that under article 2, paragraph 1, of the Convention, States parties had the obligation to take effective legislative, administrative, judicial or other measures to prevent acts of torture. However, they advocated the creation of a strong international mechanism and considered that no State would on its own be able to resolve fully the problem of preventing torture without international support.

25. On the issue of reservations, some delegations opposed the possibility of making reservations. Other delegations supported the treatment of the issue in the alternative draft as consistent with recent practice concerning the two optional protocols to the Convention on the Rights of the Child.

26. Some delegations raised concern about the financial implications of creating national and international mechanisms, expressed reluctance to accept that the international mechanism should be funded under the regular budget of the United Nations and asked to receive information from the Secretariat concerning what the budget cost of the proposed mechanisms might be.

27. At its 4th to 6th meetings, on 15 and 16 February 2001, the working group discussed in more detail the question of national and international mechanisms and the relationship between them.

B. National mechanisms

28. Many delegations found it positive that an international instrument should establish the obligation of States parties to set up national mechanisms for the prevention of torture. Others welcomed the idea that an international instrument should encourage States parties to create such mechanisms. Some recalled that the establishment or strengthening of such mechanisms had

been repeatedly recommended by the European Committee for the Prevention of Torture with respect to many of the countries it had visited. In order to ensure, as much as possible, the effectiveness of national mechanisms, it was considered important that the protocol identify the principles on which they should be based. In this respect, the working group discussed issues such as their mandate, independence, degree of effectiveness, links with other national institutions, governmental or non-governmental status, the importance of flexibility and the impact of their recommendations.

29. Most delegations considered that the mandate of national mechanisms should be as broad as possible and that they should apply universal standards for the protection of detainees. In order to be an effective method of preventing torture they should be entirely independent as to structure and personnel, have skilled and experienced personnel and have full access to all persons deprived of liberty. Some delegations considered that such access should be granted under all situations.

30. One delegation expressed the view that the mandate of the national mechanisms should be established and exercised within the framework of their national law.

31. Some delegations referred to the fact that, in some countries, national institutions for the protection of human rights clearly lacked independence and effectiveness, and expressed concern about the ability of such institutions to reach the goals set forth in the protocol.

C. Composition and mandate of the international mechanism

32. Article 2 of the alternative draft proposes the establishment of a Sub-Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Sub-Committee) of the Committee against Torture (CAT), which would be responsible for supporting and supervising the work carried out by national mechanisms. Article 16, paragraph 1 (b) specifies that, in order to enable the Sub-Committee to fulfil its mandate, States parties undertake to receive the Sub-Committee.

33. Some delegations disagreed with the mandate suggested for the proposed Sub-Committee and considered that the role of the Sub-Committee should go beyond the provision of technical assistance to the national mechanisms. They advocated a strong international mechanism which would have not only the possibility of supporting and supervising the national mechanisms but also the unrestricted ability to visit, on its own or together with national mechanisms, any place where it believed persons might be deprived of their liberty. The frequency of visits to be carried out by the international mechanism and, in particular, whether they should be periodical, ad hoc or both should, they considered, be the subject of further discussion.

34. A discussion was held about the interpretation of the provision contained in article 16, paragraph 1 (b) of the alternative draft. Some delegations expressed concern that, according to the French and English versions, the State parties undertook to receive the Sub-Committee in their territory "when required" and considered that the exact meaning of the words "when required" had to be clarified. Others, however, indicated that in the original Spanish version of the alternative draft the words "when required" did not appear and that the obligation to receive the Sub-Committee was not subject to limitations.

35. One delegation expressed the view that the visits of the Sub-Committee should be conducted in accordance with national legislation. Others indicated that the question of the legislation applicable to the visits of the Sub-Committee was not an issue anymore since, according to the alternative draft, the visits would be carried out by the national mechanisms on the basis of the mandate given to them by national law.

36. Some delegations suggested that one of the functions of the Sub-Committee should be the elaboration, on the basis of its experience, of a kind of best practices guide on which national mechanisms could base their activities.

37. Regarding the composition of the proposed Sub-Committee, the alternative draft contains basically the provisions adopted by the working group in the second reading of the original draft. Some delegations, however, questioned whether establishing a new international body was the most cost-efficient way to address the problems of preventing torture and suggested consideration be given instead to steps that could be taken to improve the operation of the current Committee against Torture (CAT). They suggested that the question of whether CAT could be enhanced in order to take up the additional functions included in the optional protocol should be addressed. Avoidance of the possibility, for example, of CAT and the Sub-Committee having contradictory views on the same issues might be one advantage. Other delegations, however, recalled the main differences between the monitoring role of CAT and the preventive role of the proposed Sub-Committee and indicated that the kind of expertise required by the members of these two bodies was different; a completely separate entity would therefore be more appropriate. Finally, other delegations considered that, before a decision was taken on the composition of the Sub-Committee, its mandate should be defined.

D. Links between national and international mechanisms

38. Most delegations in favour of the alternative draft stressed the supervisory role of the Sub-Committee vis-à-vis the national mechanisms and stated that "supervision" had to be understood in a broad sense. The supervisory functions could be carried out through a permanent exchange of information and the submission of periodic and/or ad hoc reports by the national mechanisms. It should also be possible for the Sub-Committee to travel to States parties. Reference was made in this respect to article 16, paragraph 1, of the alternative draft, according to which States parties would undertake, inter alia, to facilitate contact between the Sub-Committee and national mechanisms and to receive the Sub-Committee in their territory.

39. One delegation held the view that the Sub-Committee should play an exclusively supportive role with respect to national mechanisms and that investing the Sub-Committee with supervisory powers would raise considerable political and legal obstacles.

40. Other delegations expressed their concern that the Sub-Committee would be reduced to serving merely as an advisory and technical assistance body. They insisted that the Sub-Committee should have visiting powers in addition to its role of monitoring the activities of the national mechanism. Those powers should include, in the view of these delegations, the widest possible access to any place where persons might be deprived of liberty, on the basis of a standing invitation.

41. Many delegations expressed the view that the Sub-Committee should keep the competent national authorities and CAT informed of the activities and recommendations of the national mechanisms.

E. Scope of prevention in the optional protocol

42. A discussion was held on the scope of the prevention activities to be conducted by the national and the international mechanisms. Some delegations held the view that prevention had to be seen mainly in the context of provisions of the Convention dealing with prevention, in particular articles 10 and 11, and should not involve monitoring activities. At the international level, monitoring should remain the competence of CAT and the Special Rapporteur on torture.

43. Many delegations considered that prevention activities should include visits to all places where persons were deprived of liberty, such as prisons for men and for women, police stations, psychiatric wards, detention centres for minors and immigrants, and places of detention under the control of the judicial authorities. Other delegations raised concerns about the implications of such a scope of authority for constitutional and other fundamental rights, such as rights protecting against unreasonable search and seizure, and other privacy and security protections.

44. One delegation considered that, in view of the enormous task entrusted to the visiting mechanisms and the heavy financial burden related to it, visits should be limited to places where persons were deprived of liberty as a result of conviction for an offence and should not include institutions where persons stayed for medical reasons.

45. Regarding visits to unofficial places of detention, some delegations considered that they should not be part of the prevention activities. The existence of such places constituted, per se, a violation of human rights that should be dealt with by CAT and the Special Rapporteur on torture in the framework of their monitoring functions. Other delegations disagreed with this approach and insisted that visits to unofficial places of detention could also play an important role in terms of prevention.

F. The principles of publicity and confidentiality

46. It was generally felt that national mechanisms should operate under the principle of publicity and that they should be able, at least, to publish annual reports. Some delegations expressed the view that the question of publicity versus confidentiality could be left to the national laws. Other delegations made reference to article 14 of the original draft contained in document E/CN.4/1996/28.

47. As for the Sub-Committee, some delegations made reference to the methods of work of the International Committee of the Red Cross (ICRC) and considered that confidentiality had clear advantages and should be the rule. However, some considered that the Sub-Committee should be able to make public statements or publish its reports if the States parties failed to cooperate or to implement its recommendations. The Sub-Committee could also inform CAT, which could take appropriate measures on the basis of the Convention.

G. The optional clause contained in article 23 of the alternative draft submitted by the delegation of Mexico with the support of GRULAC

48. Discussions were also held about the provision contained in article 23 of the alternative draft, according to which a State party to the protocol may at any time declare that it agrees to receive a delegation of the Sub-Committee to carry out visits to any territory under its jurisdiction where persons deprived of their liberty may be held. Those in favour of the proposal considered that article 23 would meet the aspirations of those in favour of the original draft, since it provided the Sub-Committee with unrestricted visiting powers, without imposing acceptance of those powers on countries which would prefer a more flexible approach based on a process of confidence building. They also recalled that the Convention itself and other international human rights instruments contained optional provisions similar to the one proposed.

49. Other delegations interpreted article 23 as meaning that the level of protection to potential victims of torture provided by the protocol would not be the same in all States parties and insisted that the Sub-Committee should have full and unrestricted access to any place where persons might be deprived of liberty in any State party. The optional clause could perhaps be acceptable on a transitional basis but not on a permanent basis.

III. ADOPTION OF THE REPORT

50. The report of the working group was adopted by consensus at the 11th plenary meeting, on 23 February 2001.

Annex I

ALTERNATIVE PRELIMINARY DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT SUBMITTED BY THE DELEGATION OF MEXICO WITH THE SUPPORT OF GRULAC

Preamble

The States parties to the present Optional Protocol,

Recognizing that torture and other, cruel, inhuman or degrading treatment or punishment are prohibited,

Recalling that articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment require each State party to take effective measures to prevent acts of torture and other acts of cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Further recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires a combination of legislative, administrative, judicial and other measures,

Recognizing that States have the primary responsibility for implementing international law and the relevant international standards, that strengthening the protection of and full respect for human rights is a common responsibility shared by all and that international mechanisms are complementary to national measures,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment may be strengthened by non-judicial means of a preventive character based on visits to places of detention,

Desiring to undertake an international commitment to make the prevention of torture and other cruel, inhuman or degrading treatment or punishment more effective,

Have agreed as follows,

PART I

Article 1

Each State party to the present Protocol shall establish or maintain, at the national level, a visiting mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national mechanism), which shall carry out visits to places in any territory under its jurisdiction where persons may be or are deprived of their liberty

pursuant to an order of a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention), with a view to strengthening, if necessary, the protection of such persons from torture and other cruel, inhuman or degrading treatment or punishment.

Article 2 (former art. 2, amended)

There shall be established a Sub-Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture which shall carry out the functions laid down in the present Protocol (hereinafter referred to as the Sub-Committee):

1. The Sub-Committee shall be responsible for supporting and supervising the work carried out by national mechanisms in accordance with the provisions of the present Protocol;

2. The Sub-Committee shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles enunciated therein;

3. The Sub-Committee shall also be guided by the principles of confidentiality, impartiality, universality and objectivity.

PART II

Article 3

Each State party shall establish a national mechanism at the highest possible level within one year of the entry into force of, or of its accession to, the present Protocol.

Article 4

1. When setting up a national mechanism, each State party shall guarantee its functional independence and the independence of its staff.

2. Each State party shall take the necessary measures to ensure that the members of the national mechanism have the professional knowledge and skills required. It shall also take account of the gender balance and the need to ensure that ethnic groups and minorities are adequately represented.

3. The members shall be chosen from among persons of high moral character having proven professional experience in the field of the practice of law and the administration of justice, in particular in criminal law, prison or police administration or in the various medical fields relevant to the treatment of persons deprived of their liberty or in the field of human rights.

Article 5

National mechanisms shall have the following powers, as a minimum:

(a) To examine the situation of persons deprived of their liberty with a view to strengthening, if necessary, their protection from torture and other cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the competent authorities with a view to improving the treatment and conditions of persons deprived of their liberty and preventing torture and other cruel, inhuman or degrading treatment or punishment;

(c) To propose or comment on draft or existing legislation on this question;

(d) To take any initiatives that would help States parties fulfil their obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other relevant international instruments.

Article 6

1. In order to assess the situation of persons deprived of their liberty and to make the relevant recommendations, national prevention mechanisms shall carry out visits to places where persons are deprived of their liberty; they shall have:

(a) Unrestricted access to all relevant information concerning the number of persons deprived of their liberty pursuant to an order of a public authority or at its instigation or with its consent or acquiescence, as well as the number of places and their location;

(b) Unrestricted access to all information relevant to treatment and conditions of detention;

(c) Unrestricted access to all places where persons are deprived of their liberty;

(d) Unrestricted access to all premises where persons are deprived of their liberty;

(e) Freedom to interview persons deprived of their liberty, without witnesses, personally or with the assistance of an interpreter, if required, as well as of any personnel deemed necessary;

(f) Freedom to select the places they wish to visit;

(g) Unrestricted freedom to contact, inform and meet with the Sub-Committee.

2. Such visits may not be prohibited except in cases of absolute military necessity or serious disturbances in the place to be visited and then only as an exceptional and temporary measure. The organization, frequency and duration of such visits may not be restricted.

3. No person or organization may be penalized or otherwise harmed for having provided relevant information to a national mechanism.

Article 7

1. National mechanisms shall:

(a) Inform the competent authorities of their observations and make recommendations to them;

(b) Regularly inform the Sub-Committee of their observations and recommendations.

2. No personal data shall be made public without the prior consent of the person concerned, subject to liability.

Article 8

Each State party to the present Protocol undertakes to implement the recommendations made by its national mechanism.

PART III

Article 9 (former art. 4)

1. The Sub-Committee shall be composed of 10 members. After the fiftieth accession to the present Protocol, the number of members of the Sub-Committee shall increase to 25.

2. The members of the Sub-Committee shall be chosen from among persons of high moral character having proven professional experience in the field of the administration of justice, in particular in criminal law, prison or police administration or in the various medical fields relevant to the treatment of persons deprived of their liberty or in the field of human rights.

3. No two members of the Sub-Committee may be nationals of the same State.

4. The members of the Sub-Committee shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Sub-Committee effectively.

Article 10 (former art. 5)

1. Each State party may nominate, in accordance with paragraph 2, up to two candidates possessing the qualifications and meeting the requirements set out in article 9, and in doing so shall provide detailed information on the qualifications of the nominees.

2. (a) Nominees of the Sub-Committee shall have the nationality of a State party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State party;

(c) Not more than two nationals of a State party shall be nominated;

(d) Before a State party nominates a national of another State party, it shall seek and obtain the written consent of that State party.

3. At least five months before the date of the meeting of the States parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list in alphabetical order of all persons thus nominated, indicating the States parties which have nominated them.

Article 11 (former art. 6)

1. The members of the Sub-Committee shall be elected in the following manner:

(a) Elections of the members of the Sub-Committee shall be held at biennial meetings of States parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States parties shall constitute a quorum, the persons elected to the Sub-Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States parties present and voting;

(b) The initial election shall be held no later than six months after the date of the entry into force of the present Protocol;

(c) The States parties shall elect the members of the Sub-Committee by secret ballot;

(d) In the election of the members of the Sub-Committee, primary consideration shall be given to the fulfilment of the requirements and criteria of article 9. Furthermore, due consideration shall be given to the equitable geographical distribution of membership and to the representation of the different forms of civilization and legal systems of the States parties.

2. Consideration shall also be given to the balanced representation of women and men on the basis of the principles of equality and non-discrimination.

3. If, during the election process, two nationals of a State party have become eligible to serve as members of the Sub-Committee, the candidate receiving the higher number of votes shall serve as the member of the Sub-Committee.

Article 12 (former art. 7)

If a member of the Sub-Committee dies or resigns or for any other cause can no longer perform the member's Sub-Committee duties, the State party which nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set

out in article 9, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States parties, subject to approval of the majority of the States parties. The approval shall be considered given unless half or more of the States parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 13 (former art. 9 [6])

The members of the Sub-Committee shall be elected for a term of four years. They shall be eligible for re-election once if re-nominated. The term of half of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these members shall be chosen by lot by the Chairman of the meeting referred to in article 11, paragraph 1.

Article 14 (former art. 10 [7])

1. The Sub-Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Sub-Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Half plus one of its members shall constitute a quorum;

(b) Decisions of the Sub-Committee shall be made by a majority vote of the members present;

(c) The Sub-Committee shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Sub-Committee. After its initial meeting, the Sub-Committee shall meet at such times as shall be provided in its rules of procedure.

PART IV

Article 15

The Sub-Committee shall have as its mandate to:

1. Advise and assist States parties, when necessary, in the establishment of national mechanisms;

2. Maintain close contact with national mechanisms and provide them with training and advice with a view to strengthening their capacities;

3. Provide national mechanisms with assistance and advice in assessing needs and measures in order to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

4. Supervise the functioning of national mechanisms;

5. Make recommendations to national mechanisms and to States parties on measures to strengthen, if necessary, the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

6. Make recommendations and observations to States parties with a view to strengthening the capacities and mandate of national mechanisms for the prevention of torture.

Article 16

1. In order to enable the Sub-Committee to fulfil its mandate as set out in article 15, States parties undertake to:

(a) Facilitate contact between the Sub-Committee and national mechanisms;

(b) Receive the Sub-Committee in their territory when required;

(c) Implement the recommendations of the Sub-Committee.

2. The Sub-Committee may request any information from national mechanisms that may enable it to assess needs and the measures to be taken to strengthen the protection of persons deprived of their liberty against torture and other forms of cruel, inhuman or degrading treatment or punishment, including information concerning the number and location of places of detention, the persons deprived of their liberty and their treatment.

Article 17

1. The Sub-Committee shall inform the Committee against Torture and the State party concerned of its recommendations and observations.

2. The Sub-Committee shall submit an annual report of its activities to the Committee against Torture.

Article 18

1. The Sub-Committee and the State party concerned shall cooperate with each other in the implementation of this Protocol **(former art. 3, para. 1)**.

2. The Sub-Committee should cooperate in the prevention of torture with all bodies and mechanisms and with all international or regional mechanisms working to strengthen the protection of persons deprived of their liberty against torture and other forms of cruel, inhuman or degrading treatment or punishment.

Article 19

1. The provisions of the present Protocol shall not affect the obligations of States parties under any regional convention based on a system of visits to places of detention. The Sub-Committee and the bodies established on the basis of such regional mechanisms shall consult and cooperate in order to promote effectively the objectives of the present Protocol and avoid any duplication of work.

2. The provisions of the present Protocol shall not affect the obligations of States parties to the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1997, or the opportunity available to any State party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 20 (former art. 16, amended)

1. The expenditure incurred by the implementation of the present Protocol shall be borne by the United Nations.

2. The Secretary-General of the United Nations shall provide the staff and services necessary for the effective performance by the Sub-Committee of its functions under the present Protocol.

Article 21 (former art. 17 [16 bis])

1. A Special Fund shall be set up in accordance with General Assembly procedures, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations of the Sub-Committee, in response to an express request by a State party for assistance in its efforts to improve the protection of persons deprived of their liberty.

2. This Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

Article 22

The States parties to the present Protocol undertake to accord the Sub-Committee all the powers granted to national mechanisms for the prevention of torture under the provisions of articles 5 and 6 if, within two years of ratification of the present Protocol, a national mechanism has not started to visit places of detention.

Article 23

1. A State party to the present Protocol may at any time declare under this article that it agrees to receive a delegation of the Sub-Committee to carry out, in accordance with the

present Protocol, visits to any territory under its jurisdiction where persons deprived of their liberty by a public authority or at its instigation or with its consent or acquiescence are or may be held.

2. The Sub-Committee shall establish, by lot, a programme of visits to all States parties making the declaration provided for in the preceding paragraph.

3. Such visits may be conducted jointly with the national mechanism.

4. Visits shall be conducted by at least two members of the Sub-Committee. They may be accompanied by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol and shall be selected by consensus from a roster of experts prepared on the basis of proposals made by the States parties that have made the declaration provided for in paragraph 1 of this article, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for Crime Prevention. In preparing the roster of experts, the States parties concerned shall propose no more than five national experts.

5. The delegation making the visits and its members shall enjoy the same powers and duties conferred on the national mechanism under articles 5, 6 and 7, paragraphs 1 (a) and 2.

6. The provisions of this article shall enter into force when five States parties to the present Protocol have made the declaration provided for in paragraph 1 of this article. Such declarations must be deposited by States parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such declarations shall not become effective until six months after their notification.

Article 24 (former art. 18 [17])

1. The present Protocol shall be open for signature by any State that has signed the Convention.

2. The present Protocol shall be subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 25 (former art. 19 [18])

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or instrument of accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or instrument of accession, the present Protocol shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 26 (former art. 20 [18 bis])

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 27 (former art. 21 [19])

1. A State party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State party from its obligations under the present Protocol with regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Sub-Committee has decided or may decide to adopt with respect to the State party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Sub-Committee prior to the date on which the denunciation becomes effective.

3. As of the date on which the denunciation of the State party becomes effective, the Sub-Committee shall not commence consideration of any new matter regarding that State.

Article 28 (former art. 22 [19 bis])

1. Any State party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States parties to the present Protocol with a request that they notify him whether they favour a conference of States parties for the purpose of considering and voting on the proposal. In the event that within four months from the date of such communication at least one third of the States parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when it has been accepted by a two-thirds majority of the States parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States parties that have accepted them, other States parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 29 (former art. 23 [20], amended)

Members of national mechanisms and of the Sub-Committee shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. In particular, they shall be accorded the privileges and immunities specified in section 22 of the Convention on Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 30 (former art. 24, amended)

During a visit to a State party and without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy, members of the Sub-Committee shall:

(a) Respect the laws and regulations of the visited State; and

(b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 31 (former art. 25 [21])

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

Annex II

PROPOSAL OF NEW AND REVISED ARTICLES TO BE INCLUDED IN THE ORIGINAL DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, SUBMITTED BY THE DELEGATION OF SWEDEN ON BEHALF OF THE EUROPEAN UNION

The States parties to the present Protocol,

Recalling the purposes and principles of the Charter of the United Nations, and the obligation of States under the Charter, in particular articles 55 and 56,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited,

Recalling articles 2 and 16 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which obliges each State party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Convinced that further measures are necessary to achieve the purpose of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and of the need to strengthen the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment,

Convinced also that combating impunity constitutes an important element in the prevention of torture and recalling in this regard article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol),

Welcoming the positive impact an independent regional and national mechanism could have on the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Considering that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment could be strengthened by non-judicial means of a preventive character based on visits,

Bearing in mind also the principles of cooperation and confidentiality as basic principles of the present Protocol,

Article 1 (new)

For the purpose of this Protocol:

(a) Deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will by order of any judicial, administrative or other public authority;

(b) A mission includes the travel and all the activities carried out by the Sub-Committee in a State party's territory;

(c) A visit means the inspection of a physical facility where persons are deprived of their liberty;

(d) The Sub-Committee shall be deemed to be represented by its delegation.

Article 2 (old 2)[1]

A Sub-Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture shall be established which shall carry out the functions laid down in the present Protocol (hereinafter referred to as the Sub-Committee); the Sub-Committee shall be responsible for organizing missions and visits to the States parties to the present Protocol for the purposes stated in article 3.

The establishment of the Sub-Committee does not preclude the setting up as appropriate of a national mechanism to carry out unrestricted visits to places where persons are deprived of their liberty, as referred to in article 15.

Article 3 (old 1 revised)

1. The objective of this Protocol is to establish an international preventive visiting mechanism to examine the treatment of persons deprived of their liberty, with a view to recommending means for strengthening, if necessary, the protection of such persons from torture and other cruel, inhuman or degrading treatment or punishment.

2. Each State party agrees to permit missions by the Sub-Committee to its territory and visits to any place under its jurisdiction and control where persons are or may be deprived of their liberty.

3. Objection to a visit may only be made on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited, which temporarily prevent the carrying out of such a visit. The existence of a state of emergency cannot as such be invoked by a State party as a reason to object to a visit.

4. Following objections under paragraph 3, the State party and the Sub-Committee shall immediately enter into consultations in order to clarify the situation and seek agreement to enable the Sub-Committee to exercise its functions expeditiously. Such arrangements may include the transfer to another place of any person whom the Sub-Committee proposed/wishes to visit. Until the visit takes place, the State party shall provide information to the Sub-Committee about the person concerned.

5. A State party may at the time of its ratification or accession to this Protocol consult with the Sub-Committee in order to assess its needs for technical cooperation.

6. A State party may also upon ratification or accession submit a public declaration delaying visits by the Sub-Committee to its territory or places where persons are deprived of their liberty under its jurisdiction and control, for a maximum of two years after the entry into force of the Optional Protocol for that State party. The State party, in consultation with the Sub-Committee, shall review this declaration one year after the entry into force of the Optional Protocol for that State party. Missions may take place immediately after the entry into force of the Optional Protocol for that State party.

Article 4 (old 3)

1. In the application of this Protocol the Sub-Committee and the national authorities of the State party concerned shall cooperate with each other.

2. The Sub-Committee shall conduct its work within the framework of the Charter of the United Nations and be guided by the purposes and principles thereof.

3. The Sub-Committee shall also be guided by the principles of confidentiality, impartiality, universality and objectivity.

Article 5 (old 4)

1. The Sub-Committee shall consist of 10 members. After the fiftieth ratification or accession to the present Protocol, the number of members of the Sub-Committee shall increase to 25.

2. The members of the Sub-Committee shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular in criminal law, prison or police administration or in the various medical fields relevant to the treatment of persons deprived of their liberty or in the field of human rights.

3. No two members of the Sub-Committee may be nationals of the same State.

4. The members of the Sub-Committee shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Sub-Committee effectively.

Article 6 (old 5)

1. Each State party may nominate, in accordance with paragraph 2, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2. (a) Nominees of the Sub-Committee shall have the nationality of a State party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State party;

(c) Not more than two nationals of a State party shall be nominated;

(d) Before a State party nominates a national of another State party, it shall seek and obtain the written consent of that State party.

3. At least five months before the date of the meeting of the States parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list in alphabetical order of all persons thus nominated, indicating the States parties, which have nominated them.

Article 7 (old 6)

The members of the Sub-Committee shall be elected in the following manner:

1. Elections of the members of the Sub-Committee shall be held at biennial meetings of States parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States parties shall constitute a quorum, the persons elected to the Sub-Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States parties present and voting.

2. The initial election shall be held no later than six months after the date of entry into force of the present Protocol.

3. The States parties shall elect the members of the Sub-Committee by secret ballot.

4. In the election of the members of the Sub-Committee, primary consideration shall be given to the fulfilment of the requirements and criteria of article 5. Furthermore, due consideration shall be given to a proper balance among the various fields of competence referred to in article 5, to equitable geographical distribution of membership and to representation of the different forms of civilization and legal systems of the States parties.

5. Consideration shall also be given to balanced representation of women and men on the basis of the principles of equality and non-discrimination.

6. If, during the election process, two nationals of a State party have become eligible to serve as members of the Sub-Committee, the membership of the Sub-Committee shall be resolved in the following manner, in conformity with article 5, paragraph 3:

(a) The candidate receiving the higher number of votes shall serve as the member of the Sub-Committee;

(b) Where the nationals have received the same number of votes, the following procedure applies:

(i) Where only one has been nominated by the State party of which he or she is a national, that national shall serve as the member of the Sub-Committee;

(ii) Where both nationals have been nominated by the State party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall be the member;

(iii) Where neither national has been nominated by the State party of which he or she is a national, a separate vote by secret ballot shall be held to determine which national shall be the member.

Article 8 (old 7)

If a member of the Sub-Committee dies or resigns or for any other cause can no longer perform the member's Sub-Committee duties, the State party which nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States parties, subject to approval of the majority of the States parties. The approval shall be considered given unless half or more of the States parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9 (old 8 revised)

1. The Sub-Committee:

(a) Shall establish on the basis of a transparent procedure, a programme of regular missions to all States parties. These missions may also include follow-up missions;

(b) Shall also undertake such visits or missions as appear to be required in the circumstances and based on information received by the Sub-Committee and assessed by it as credible, with a view to furthering the aims of this Protocol;

(c) Shall after a mission or a visit advise and assist the State party in assessing the needs and appropriate measures for strengthening the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment;

(d) May make recommendations to the State party on the mandate, the competence and the effective functioning as well as other relevant activities of an established national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, in accordance with article 15;

(e) Shall transmit requests from a State party for technical assistance and technical cooperation as well as facilitate the provision of such cooperation from the relevant United Nations bodies such as UNHCHR, UNDP, ODCCP, UNICEF and UNIFEM.

2. The Sub-Committee shall send a written notification to the Government of the State party concerned of its intention to organize a mission.

3. Before a mission is carried out, the Sub-Committee and the State party concerned shall, if either of them so request, enter into consultations with a view to agreeing without delay on the practical arrangements for the mission. Such consultations on the practical arrangements for the mission may not include negotiations on the obligations of a State party under articles 3 or 13.

Article 10 (old 9)

The members of the Sub-Committee shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1.

Article 11 (old 10)

1. The Sub-Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Sub-Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Half plus one members shall constitute a quorum;

(b) Decisions of the Sub-Committee shall be made by a majority vote of the members present;

(c) The Sub-Committee shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Sub-Committee. After its initial meeting, the Sub-Committee shall meet at such times as shall be provided in its rules of procedure.

Article 12 (old 11)

1. The Sub-Committee may decide to postpone a mission to a State party if the State party concerned has agreed to a scheduled visit to its territory by the Committee against Torture, pursuant to article 20, paragraph 3 of the Convention. The dates of the rescheduled mission shall be determined taking into account the provisions of articles 3 and 9.

2. The Sub-Committee, while respecting the principles set out in article 4, is encouraged to cooperate for the prevention of torture in general with the relevant United Nations organs and mechanisms as well as international, regional and national institutions or organizations working towards strengthening the protection of persons from torture and other cruel, inhuman or degrading treatment or punishment.

3. If, on the basis of a regional convention, a system of visits to places of detention similar to the one under the present Protocol is in force for a State party, the Sub-Committee shall still be responsible for missions to such a State party under this Protocol, assuring its universal application. However, the Sub-Committee and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to the efficient promotion of the objectives of this Protocol, including on the matter of duplication of work. Such cooperation may not exempt the States parties belonging also to such conventions from cooperating fully with the Sub-Committee.

4. The provisions of the present Protocol do not affect the obligations of States parties to the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977, or the possibility for any State party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 13 (old 12 revised)

1. The Sub-Committee and the State party shall cooperate with a view to the effective fulfilment of the mission. In particular, the State party shall provide the Sub-Committee with:

(a) Unrestricted access to all information, deemed relevant by the Sub-Committee, concerning the number of persons deprived of their liberty, in accordance with article 16 of the Convention, as well as the number of places and their location;

(b) Unrestricted access to all information, deemed relevant by the Sub-Committee, concerning the treatment and the conditions of detention;

(c) Access to and freedom of movement within any territory under its jurisdiction and control for the conduct of the mission;

(d) All information deemed relevant by the Sub-Committee to the effective conduct of the mission, including in particular on any person or places referred to in article 3 of the Protocol;

(e) Access to and within any place referred to in article 3 of the Protocol;

(f) Access to persons referred to in article 3 of the Protocol, and the opportunity for private interviews with them;

(g) The opportunity to communicate freely with any person whom they believe can supply relevant information.

2. With regard to a particular visit, the obligations referred to under paragraph 1 shall be implemented in a manner consistent with national law and professional ethics complimentary to international human rights standards.

Article 14 (old 14)[2]

1. After each mission or visit, the Sub-Committee shall draw up a report on the mission or the visit and any recommendations it considers necessary, which shall be submitted to the State party concerned. The Sub-Committee shall finalize its report after fair consideration is given to comments submitted, within a reasonable time, by the State party concerned. If a State party so wishes its comments shall form an annex to the report.

2. The Sub-Committee shall transmit to the State party its report containing any recommendations it considers necessary to improve the protection of persons deprived of their liberty. To this effect, the Sub-Committee and the State party may consult on the implementation of the recommendations, including ways and means in which the State party can be assisted, as well as the submission of a request for technical cooperation as referred to in article 9, paragraph 1 (e).

3. The information gathered by the Sub-Committee in relation to a visit, its report and its consultations with the State party shall be confidential. Members of the Sub-Committee and other persons assisting the Sub-Committee are required, during their terms of office, to maintain the confidentiality of the facts or information of which they have become aware during the discharge of their functions.

4. At the request of the State party concerned, the Sub-Committee shall publish its report on a visit. By agreement between the Sub-Committee and the State party, the report on a visit may be published or made public in part. If the State party decides to make part of the report on a visit public, the Sub-Committee may make a public statement or publish the report in whole or in part in order to ensure a balanced presentation of the contents of the report.

5. If a State party fails to cooperate or refuses to improve the situation in the light of the Sub-Committee' recommendations, the Committee against Torture may at the request of the Sub-Committee decide by majority of its members, after the State party has had an opportunity to make known its views, to make a public statement on the matter or to publish the report.

6. No personal data shall be published without the expressed consent of the person concerned.

7. Subject to the rule of confidentiality under paragraph 3, the Sub-Committee shall every year submit an annual report to the Committee against Torture on its activities, which shall be public.

Article 15 (new)

For the purposes of this Protocol, a State party wishing to establish a national mechanism undertakes to ensure that:

(a) The national mechanism will be composed of independent experts fulfilling the requirements set out in articles 4, paragraph 3 and 5, paragraph 2;

(b) It has full powers to issue recommendations to the concerned authorities;

(c) It has unrestricted access to all places where persons are deprived of their liberty under all situations, including in peacetime, times of public disorder or states of emergency and during war in accordance with international humanitarian law;

(d) Unrestricted access to persons deprived of their liberty;

(e) Full freedom to interview the persons deprived of liberty without witnesses, with the assistance of interpreters, if required, as well as all relevant personnel or persons;

(f) Unrestricted liberty to contact, inform and meet with the Sub-Committee with a view to implementing article 9, paragraph 1 (d);

(g) The reports on its visits shall be public.

Article 16 (old 15)

Each State party shall disseminate information about the present Protocol, the tasks of the Sub-Committee and the facilities to be provided to the Sub-Committee during a mission to all concerned authorities and ensure the inclusion of such information in the training of relevant personnel, civil, police and military, who are involved in the custody, interrogation or treatment of persons in situations referred to in article 3.

Article 17 (old 16)

1. The expenditure incurred by the Sub-Committee in the implementation of the present Protocol, including missions and visits, shall be borne by the United Nations.

2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Sub-Committee under the present Protocol.

Article 18 (old 17)

1. A Special Fund shall be set up in accordance with General Assembly procedures, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Sub-Committee to a State party expressing the need for additional assistance for its ongoing efforts to improve the protection of persons deprived of their liberty.

2. This Fund may be financed through voluntary contributions.

Article 19 (old 18)

1. The present Protocol is open for signature by any State which has signed the Convention.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Convention.

3 Instruments of ratification or instrument of accession, together with a public declaration pursuant to article 3, paragraph 6, shall be deposited with the Secretary-General of the United Nations.

4. The present Protocol shall be open to accession by any State which has ratified or acceded to the Convention.

5. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

6. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession and public declaration submitted pursuant to article 3, paragraph 6.

Article 19 <u>bis</u> (new)

No reservations shall be made to the present Protocol.

Article 20 (old 19)

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or instrument of accession, the present Protocol shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 21 (old 20)

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 22 (old 21)

1. Any State party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State party from its obligations under the present Protocol in regard to any act or situation which occurs prior to the date at which the denunciation becomes effective, or to the actions that the Sub-Committee has decided or may decide to adopt with respect to the State party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Sub-Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of the State party becomes effective, the Sub-Committee shall not commence consideration of any new matter regarding that State.

Article 23 (old 22)

1. Any State party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States parties to the present Protocol with a request that they notify him whether they favour a conference of States parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States parties to the present Protocol in accordance with their respective constitutional process.

3. When amendments come into force, they shall be binding on those States parties which have accepted them, other States parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 24 (old 23)

Members of the Sub-Committee and of missions authorized under the present Protocol shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. In particular, they shall be accorded the privileges and immunities specified in section 22 of the Convention on Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 25 (old 24)

In the conduct of missions, all members shall without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

(a) Respect the laws and regulations of the visited State; and

(b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 26 (old 25)

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

Notes

[1] See E/CN.4/2000/58.

[2] E/CN.4/1996/28.